

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA)
)
) CASE NO. 1:10MJ00479
v.)
) Hon. John F. Anderson
THOMAS ANDREW TALLARICO)
)
)
Defendant.)

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR
EXPEDITED SENTENCING

The United States of America, by and through its under-signed counsel, hereby opposes the Defendant's Motion for Expedited Sentencing and waiver of a Presentence Report (PSR).

I. Only the Court Has Discretion to Waive Preparation of a Presentence Report

Rule 32(c)(1)(A) of the Federal Rules of Criminal Procedure requires the preparation and submission of a PSR to the Court, unless (1) a statute requires otherwise, or (2) the Court finds that the record before it would allow the Court to meaningfully exercise its sentencing authority under 18 U.S.C. § 3553 and explains its findings on the record. A defendant may not waive the preparation of a PSR. United States v. Turner, 816 F. Supp. 1102, 1103 (E.D. Va. 1993); see also U.S. Sentencing Guidelines Manual § 6A1.1(b) (2009). Congress specifically amended Rule 32 to eliminate a defendant's ability to waive the PSR. See Sen. Rep. No. 98-225, at 71 (1983), reprinted in 1984 U.S.C.C.A.N. 3182, 3254; see also Turner, 816 F. Supp. at 1103; U.S. Sentencing Guidelines Manual § 6A1.1 cmt. (1989) (noting that Congress deleted portions of Rule 32(c) allowing the defendant to waive the PSR).

II. A Presentence Report Would Provide the Court with Information Relevant to its Sentencing Authority in this Case

At sentencing, the Court must consider the history and characteristics of the defendant, as well as the need for the sentence to promote respect for the law and afford adequate deterrence to criminal conduct. 18 U.S.C. § 3553. The PSR would likely provide relevant information on these factors to the Court. While the Defendant may have a history of giving back to the community, that is not the only aspect of the Defendant's history and characteristics that the Court must consider. The Court has very little information with respect to the Defendant's life outside of the spotlight. Furthermore, as the Defendant's motion notes, the Defendant has traveled extensively "throughout Europe, Asia and South America." Defendant's Motion for Expedited Sentencing, ¶ 10. Thus, asking the Defendant to return to the Eastern District of Virginia one additional time for sentencing is not unreasonable. Moreover, such a request is not overly burdensome in light of the fact that the Defendant failed to declare a substantial sum of money. While the Defendant does not have a prior record, the Defendant's background and history, his financial situation, as well as his motivations for making up the story he told CBP Officers when initially questioned are absent from the record. Such information would allow the Court to fashion an appropriate sentence in this case. Thus, without the PSR, there is not sufficient information in the record to waive the production of the PSR. See Fed. R. Crim. P. 32(c)(1)(A)(ii); see also *Turner*, 816 F. Supp. at 1103.

III. Conclusion

Based on the foregoing, the Government believes that the Defendant's motion should be denied.

Respectfully submitted,

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United States Attorney

By: _____ /s/

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CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of that electronic filing (NEF) to the following:

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